

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF GENERAL COUNSEL

In the Matter of )  
Streamlining the Commission's Antenna )  
Structure Clearance Procedure )

and )

Revision of Part 17 of the Commission's )  
Rules Concerning Construction, Marking, )  
and Lighting of Antenna Structures )

WT Docket No. 95-5

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**REPLY COMMENTS OF EMI COMMUNICATIONS CORPORATION**

EMI Communications Corporation ("EMI"), by its attorneys, hereby submits these reply comments in the above-referenced proceeding. EMI supports the request of certain commenters that the Commission clarify that responsibility for antenna structure maintenance descends to tenant licensees only upon receipt of official notice from the FCC informing licensees of the owner's default. EMI urges the Commission to require structure owners who default on their primary obligations under the proposed program to pay a forfeiture penalty and reimburse tenant licensees for the costs associated with complying with the registration and maintenance requirements in the owner's stead. EMI also urges the Commission to permit structure owners to voluntarily assign their registration and maintenance obligations to tenant licensees or non-tenant agents. Finally, EMI requests that the Commission not require the renewal of antenna structure registrations nor the registration of voluntarily painted or illuminated antenna structures.

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**I. The Commission Should Clarify That Responsibility For Antenna Structure Maintenance Descends To Tenant Licensees Only Upon Receipt Of Official FCC Notice**

Several commenters urged the Commission to clarify that responsibility for antenna structure registration and maintenance, and liability for failures thereof, descend to tenant licensees only upon the receipt of official notice from the Commission of the structure owner's default.<sup>1/</sup> EMI supports this request. The secondary registration and maintenance responsibilities of tenant licensees should arise only upon their receipt of notice from the FCC. Absent the implementation of a notice mechanism for the transfer of responsibility to tenant licensees following the owner's default, the proposed registration program will do little to relieve the existing burdens on tenant licensees. In effect, tenant licensees would be forced to share primary responsibilities, jointly and severally, with tower owners in order to avoid liability for deficiencies in structure registration or maintenance. Such a result would be directly at odds with the objective of this proceeding to reduce burdens on tenant licensees by making antenna structure owners primarily responsible for antenna structure registration and maintenance.<sup>2/</sup>

Without an official notification mechanism, the proposed program would do the opposite of "streamlining" the registration procedure in order to "decrease the number of

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<sup>1/</sup> See, e.g., Comments of AT&T Corp. at 4-5; Comments of the National Association of Broadcasters at 4; Comments of Mitchell Energy & Development Corporation at 2; Comments of Nationwide Communications, Inc. at 3; Comments of Wireless Cable Association International at 3.

<sup>2/</sup> See In the Matter of Streamlining the Commission's Antenna Structure Clearance Procedures and Revision of Part 17 of the Commission's Rules Concerning Construction, Marking, and Lighting of Antenna Structures, Notice of Proposed Rulemaking, WT Docket No. 95-5 (rel. January 20, 1995)("Notice"), at ¶¶ 6, 23.

entities affected by these requirements," as the Commission intended.<sup>3/</sup> Instead, it would impose registration and maintenance obligations on a new class of regulatees -- structure owners -- while effectively retaining most of the existing burdens on tenant licensees. This scenario is contrary to the objectives of this proceeding. The Commission should clarify that the registration and maintenance responsibilities of structure owners descend to tenant licensees only upon FCC notification to the tenants of the owner's default and of the transfer of compliance responsibility to them.

## **II. The Commission Should Require Structure Owners Who Default On Their Registration And Maintenance Obligations To Pay A Forfeiture Penalty And Reimburse Tenant Licensees For Costs Of Assuming Their Responsibilities**

The Commission should make clear to structure owners that failure to satisfy their primary registration and maintenance responsibilities will automatically result in a forfeiture penalty. EMI supports Motorola's request<sup>4/</sup> that the Commission coordinate the rules promulgated in this proceeding with the rules promulgated in the forfeiture policy statement proceeding.<sup>5/</sup> EMI disagrees, however, with Motorola's statement that a "forfeiture might be imposed on the licensee tenants" in the event a structure owner "cannot be located."<sup>6/</sup> As discussed above, liability on the part of tenant licensees for failures in antenna structure registration or maintenance should apply only after the FCC has notified these tenant

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<sup>3/</sup> Notice at ¶ 7.

<sup>4/</sup> See Comments of Motorola at 18.

<sup>5/</sup> In the Matter of the Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines, CI Docket No. 95-6 (Feb. 10, 1995).

<sup>6/</sup> Comments of Motorola at 18.

licensees of the owner's default and the transfer of responsibilities to them. Imposing forfeiture penalties on tenant licensees in instances where the tower owner is unreachable would violate these tenant licensees' rights to due process and would be tantamount to holding both the structure owner and tenant licensees jointly and severally liable for non-compliance. This result would be fundamentally contrary to the intention of the Commission in this proceeding to relieve the regulatory burdens on tenant licensees.

In addition to imposing forfeiture penalties on defaulting structure owners, the Commission also should require these owners to reimburse tenant licensees for expenses incurred in complying with the Commission's registration and maintenance requirements. Tenant licensees should not be penalized financially for the refusal of structure owners to carry out their obligations under the proposed program. Given that structure owners are primarily responsible for tower registration and maintenance, their failure to satisfy these obligations should not relieve them of the financial burden associated with compliance.

### **III. The Commission Should Permit Antenna Structure Owners To Voluntarily Assign Registration and Maintenance Obligations To Tenant Licensees Or Non-Tenant Agents**

Several commenters urged the Commission to permit antenna structure owners to assign their registration and maintenance obligations by contract to tenant licensees or non-tenant agents.<sup>71</sup> EMI supports this proposal.

In many instances, antenna structures are owned by local government agencies, private citizens, and other entities that may not have the wherewithal or willingness to

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<sup>71</sup> See, e.g., Comments of AT&T Corp. at 6-7; Comments of the Cellular Telecommunications Industry Association at 4.

become aware of and comply with their primary registration and maintenance obligations under the proposed program. As the Commission itself acknowledged in the Notice, "oftentimes the antenna structure owner is not a Commission licensee and therefore, has no vested interest in compliance."<sup>8/</sup>

Permitting the voluntary assumption of registration and maintenance responsibilities by tenant licensees is firmly within the public interest insofar as it will make it possible for non-conforming towers to be brought into compliance. Without making such an option available to tenant licensees, towers that are not registered or otherwise in violation of the FCC lighting and marking requirements most likely will remain so until either existing or prospective tenant licensees pressure tower owners into compliance. In effect, many nonconforming antenna structures in violation of the FCC's registration, marking or lighting rules would languish unrectified while tenant licensees aware of the nonconformance and willing to take remedial measures are prevented from doing so. This delay in bringing nonconforming structures "up to code" would be adverse to the public interest in general and would compromise air safety specifically.

Similarly, permitting structure owners to assign their primary registration and maintenance responsibilities by contract to non-tenant agents would best serve the needs of many structure owners and the public interest. As CTIA and the Association of Federal Communications Consulting Engineers (AFCCE) indicate in their comments, there are instances where structure owners, through either "master lessor" agreements or other management agreements, have contracted with non-tenant third parties for the maintenance

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<sup>8/</sup> Notice at ¶ 20.

and administration of subject structures.<sup>9/</sup> These arrangements enable owners of many structures or large complexes to ensure that adequate attention is paid to maintaining all structures in compliance with Federal regulations. Typically, the management company or agent is more familiar with the structure and is better able to ensure its conformance to Federal requirements than already overburdened structure owners. Permitting structure owners to assign their responsibilities to either tenant licensees or third-party agents would further the objectives of this proceeding to the extent that such an option would increase the level of compliance with the Commission's proposed registration and maintenance requirements.

#### **IV. The Commission Should Not Require The Renewal Of Antenna Structure Registrations**

EMI disagrees with commenters who favor requiring antenna structure registrants to renew their registrations periodically.<sup>10/</sup> The proposed registration program already requires antenna structure owners to maintain the integrity of the antenna structure database by notifying the Commission of any changes in the coordinates, height, ownership or painting and lighting of subject structures.<sup>11/</sup> Given this requirement, the imposition of a renewal obligation on antenna structure registrants would be superfluous.

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<sup>9/</sup> Comments of CTIA at 4; Comments of Association of Federal Communications Consulting Engineers at 2.

<sup>10/</sup> See, e.g., Comments of Motorola at 10-11; Comments of Bell Atlantic Mobile Systems at 3.

<sup>11/</sup> See Notice at ¶ 7 and Appendix C, Proposed FCC Form 854, at Box 2.

In light of its unnecessariness, a renewal requirement would also be at odds with the Commission's intention in this proceeding to "reduc[e] burdens" on regulatees and "simplify the antenna clearance process for both industry and the Commission."<sup>12/</sup> A renewal requirement would be especially burdensome for owners of many towers located in several states, like EMI, who would have to monitor the renewal cycles of, and file renewal applications for, all of their towers if a renewal requirement were implemented. In addition, having to administer a renewal program would place unnecessary logistical and personnel burdens on the Commission, which is already overburdened and understaffed.

**V. The Commission Should Not Require The Registration Of Voluntarily Painted Or Illuminated Antenna Structures**

EMI agrees with those commenters who recommend that the Commission not require the registration of voluntarily painted or illuminated antenna structures.<sup>13/</sup> Requiring owners of antenna structures to register structures that are not subject to the proposed registration program but are in some way painted or lit will create a disincentive against voluntarily lighting or painting non-subject structures. If registration were required, owners of voluntarily lit or marked structures likely would remove all lighting and marking from their structures to avoid having to comply with the stringent requirements of the proposed registration program and Part 17. A result that could increase the potential for accidents

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<sup>12/</sup> Notice at ¶ 6.

<sup>13/</sup> See, e.g., Comments of Dean Brothers Publishing, D/B/A/ Fryer's Site Guide at 14; Comments of the National Association of Broadcasters at 7; Comments of GTE Service Corporation at 24-25.

involving low-flying aircraft, and that would be contrary to the Commission's overarching objective to improve air safety.

EMI recommends that the FCC make registration of voluntarily painted or lit antenna structures voluntary. The Commission should clarify, however, that owners of voluntarily-lit or marked structures that opt to register those structures will be bound by all of the requirements associated with the proposed registration program (i.e., maintaining their structures in accordance with Part 17 and preserving the accuracy of the data pertaining to the structures on file with the Commission).

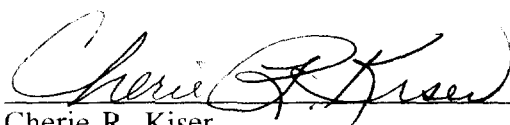


**V. Conclusion**

For the aforementioned reasons, EMI Communications Corporation urges the Commission to adopt its proposed streamlined antenna structure clearance and registration program, modified to the extent recommended in its initial Comments and in this Reply.

Respectfully submitted,

EMI COMMUNICATIONS CORP.

A handwritten signature in cursive script, appearing to read "Cherie R. Kiser", written over a horizontal line.

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April 20, 1995

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## CERTIFICATE OF SERVICE

I, Gail R. Gordon, hereby certify that copies of the foregoing Reply Comments of EMI Communications Corporation were delivered by first-class mail, postage prepaid on this 20th day of April, 1995, to the parties listed below



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